

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI
Sh. Narinder Kumar, Member (Judicial) & Sh. Rakesh Bali, Member (Administrative)

Appeal No.05-08/ATVAT/19
Date of Judgment : 02/02/2022

M/s. Nav Electricals,
2060, Chah Indara, Bhagrath Place,
Delhi – 110006.

..... Appellant

V

Commissioner of Trade & Taxes, Delhi.

..... Respondent

Counsel representing the Appellant : Sh. B.K. Bansal,
Counsel representing the Revenue : Sh. M.L. Garg.

JUDGMENT

1. The appellant is a dealer registered under Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act) vide TIN 07480363667. Present four appeals have been filed by the dealer against order dated 11.06.2018 passed by learned OHA - Special Commissioner-I, Zone -II.

Vide impugned order Ld. OHA disposed all the objections filed by the dealer challenging notices of default assessment of tax, interest and penalty, framed on 08/09/17, u/s 32 & 33 of DVAT Act, in addition to challenge to the notice of

default assessment of tax and interest, of the same date i.e. 08/09/17 issued u/s 9 of Central Sales Tax Act, 1956 (herein after referred to as CST Act).

It may be mentioned that separate assessment order was passed by the Assessing Authority in respect of 1st quarter of 2013 and common order was passed in respect of tax period - 2nd, 3rd & 4th quarter, 2013. As regards imposition of penalty u/s 33 read with section 86(12), common order was passed in respect of all the four quarters of 2013. Common order was also passed in respect of all the four quarters of 2013, under CST Act.


2. **As regards 1st Qtr**, the Assessing Authority observed that the dealer-appellant had purchased goods from M/s. J.S. Electricals, M/s. K.G.N. Electricals, M/s. Sanjay Nandani Sales Corpn. & M/s. Kalkaji Trading Corp.

So far as M/s. K.G.N. Electricals is concerned, the Assessing Authority found that wife of the proprietor of the dealer-appellant is the proprietor of the said concern M/s. K.G.N. Electricals. On this very ground, the Assessing Authority disallowed ITC claimed against purchases made from the said concern, having regard to the provisions of Section 17 of DVAT Act.

As regards M/s. Sanjay Nandani Sales Corpn. and M/s. Kalkaji Trading Corp., the Assessing Authority observed that the selling dealer of the appellant-dealer was also related to these two concerns, they being husband and wife.

Further, a perusal of Annexure 2A filed by M/s. Sanjay Nandani Sales Corpn. showed cancellation of its selling dealers Shri Jagannath Trading Corporation, Shri Jagannath Enterprises, Ankit Sales Corporation, Sharda Enterprises and Vikas Trading Corporation. Assessing authority observed that selling dealers were common in respect of both these concerns and M/s. K.G.N. Electricals. The Assessing authority disallowed the claim of the dealer in respect of ITC, keeping in view violation of provisions of Section 17 of DVAT Act, while observing that the trade was between the husband and wife circular in nature, and that it was a case of evasion of tax by nefarious means.

On perusal of Annexure 2A filed by M/s. J.S. Electricals, from whom the dealer-appellant is stated to have purchased goods, revealed that the dealer-appellant had purchased goods from Dimple Plastic (P) Ltd, Sharda Enterprises, Shri Jagannath Trading Corporation, Shri Jagannath Enterprises, and Vikas Trading Corporation.



M/s. Dimple Plastic (P) Ltd. used to deal in plastic and other goods and not in electrical goods whereas the dealer-appellant used to deal in electrical goods.

Assessing Authority found that M/s. Sharda Enterprises had not shown any sale or purchase during first quarter 13-14 and accordingly was of the view that the purchases shown by M/s. J. S. Electricals were fake / suspicious.

M/s Vikas Trading Corporation is further stated to have purchased goods from M/s Multimedia, taxable @ 5% and 12.5% whereas M/s Multimedia Electronics sold goods taxable @5% only. In view of this fact, the Assessing Authority was of the view that the dealer – appellant made purchases on papers only. With these observations, Assessing Authority rejected ITC claimed by the dealer.

As further observed by the Assessing Authority, once the ITC claim was rejected, the sale shown by the dealer – appellant, as central, actually did not exist and such dealer was not entitled to claim benefit of sale against C-Form.

Assessing Authority further observed that the dealer had not filed form-9, and accordingly rejected all his central sales against statutory forms and treated them as sales without any statutory forms.

Assessing Authority further observed that same pattern was seen in the subsequent quarters.

3. On perusal on Annexure-2(A) of dealer – appellant for 4th Quarter-2013-14, Assessing Authority found as under :

“It is found that he is purchasing goods from his wife as M/s K.G.N. Electricals apart from Sanjay Nandani Sales Corp. and M/s. Shri Kalkaji Trading Corp. having TIN 07170368930 & 07710442644. M/s Nav Electrical has purchased goods from above named three dealers taxable @ 5 & 12.5% respectively, which is a sign of suspicious trading”.

4. On perusal of DP-I filed by M/s. Sanjay Nandani Sales Corp. and M/s. Shri Kalkaji Trading Corp., the Assessing Authority observed as under –

“That M/s. Sanjay Nandani Sales Corp. is running his business from G-3/151, Sector-16, Rohini, Delhi-110089. The said dealers got himself register on 12.02.2009 and filed DVAT-4 closure of his business w.e.f. 31.05.2015. Whereas M/s Shri Kalkaji Trading Corp. has got himself register on 19.09.2012 and filed DVAT-9 for closure of business w.e.f.31.05.2015. The dealer is also running his business from G-3/151, Sector-16, Rohini, Delhi-110089 where M/s. Sanjay Nandani Sales Corp. is already functioning. The proprietor of Shri Kalkaji Trading Corp. is Ms. Geetika whereas M/s Shri Sanjay

Nandani is proprietor of M/s. Sanjay Nandani Sales Corp. as confirmed over phone, Shri Sanjay Nandani and Ms. Geetika are husband and wife.

Further, on perusal of Annexure-2(a) filed M/s Sanjay Nandani Sales Corp. shows his selling dealers as cancelled and one of the selling dealers is common to K.G.N. Electricals”.

5. Assessing Authority further observed as under -

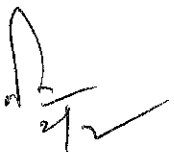
“Hence, from the above, it is clear that the trading is circular in nature and in some case, the trading is between husband and wife which contravenes Section-17 of the DVAT Act and, hence, ITC claimed is disallowed as it is a clear cut case of evading tax by nefarious means. I accordingly, reject the ITC claimed in all quarters and also reject all his Central sale against statutory forms and treat it as sale without any statutory forms.”

6. Vide order of same date, the Assessing Authority issued notice of default assessment of tax and interest, under CST Act, while observing that for the reasons given in respect of assessment made under DVAT Act for year 2013-14, he was making assessment under CST Act. While so observing the Assessing Authority levied additional tax and interest under CST Act, as under:

Tax period	Additional tax due	Interest	Total Amount due
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1 st Qtr.2013	1,10,649/-	68,173/-	1,78,812/-
2 nd Qtr.2013	1,747/-	1,010/-	2,757/-
3 rd Qtr.2013	4,048/-	2,188/-	6,236/-
4 th Qtr.2013	4,291/-	2,162/-	6,453/-

7. Feeling dissatisfied with the above mentioned assessments framed by the Assessing Authority the dealer-appellant filed objections but the Ld. OHA rejected all the objections and upheld the default assessment of tax, interest and penalty, as framed by the Assessing Authority vide order dated 08/09/17.
8. Hence these appeals.
9. Arguments heard. File perused.
10. Learned counsel for the applicant has contended that this is a case where notice is stated to have been issued by the department on portal, before issuing notice of default assessment of tax and interest, but there is nothing on to record to suggest that the department complied with directions contained in circular No. F.3(366)/Policy/VAT/2013/1235-1245 dated 17/1/2014.




Learned counsel for the Revenue has submitted that notices were duly served on the dealer by displaying the same on the portal.

As per instructions / directions contained in the above mentioned circular dated 17/1/2014 issued by Commissioner, VAT, notices or summons or orders are required to be served upon the dealer in the manner prescribed therein.


11. While dealing with the same contentions raised on behalf of the objector, learned OHA observed that once a notice is issued online through DVAT portal, the same is deemed to be served to the dealer immediately and that the said practice is in conformity with the order dated 17/1/2014 issued by the Commissioner, VAT. When it is not case of the Revenue that any other mode of service as provided in circular dated 17/1/2014 was adopted, learned OHA fell in error in observing that once a notice is issued online through DVAT portal, the said practice was ⁱⁿ conformity with the said circular.
12. The other observations made by learned OHA while dealing with the other objections, are based on what stands recorded in the notices of default assessment issued by the Assessing

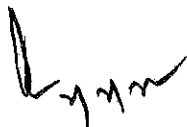
Authority. There is no reference in the impugned order to any of the document produced before learned OHA.

13. In the given situation the result is that when notice u/s 59(2) of DVAT Act intended to be issued to the dealer – appellant, was not duly served upon the dealer, this is a case of non providing of reasonable opportunity of being heard by the Assessing Authority. Consequently, the matter needs to be remanded to the Assessing Authority for decision afresh after providing to the dealer – appellant reasonable opportunity of being heard and that too in accordance with law.

14. As a result, the appeals are disposed of and while setting aside the impugned orders passed by learned OHA, the matter is remanded to learned Assessing Authority for decision afresh after providing to the dealer – appellant reasonable opportunity of being heard and that too in accordance with law.

15. Parties to appear before learned Assessing Authority on 3/3/2022.


2/7/22



16. Copy of the order be supplied to both the parties as per rules.
One copy be sent to the concerned authority. Another copy
be displayed on the concerned website.

Announced in open Court.

Date : 2/2/2022



(Rakesh Bali)
Member (A)



(Narinder Kumar)
Member (J)

Appeal No. 05-08/DVAT/19/1936-43

Dated: 07/02/2022

Copy to:-

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|---|----------------|
| (1) VATO (Ward-) | (6) Dealer |
| (2) Second case file | (7) Guard File |
| (3) Govt. Counsel | (8) AC(L&J) |
| (4) Secretary (Sales Tax Bar Association) | |
| (5). PS to Member (J) for uploading the judgment on the portal of DVAT/GST, Delhi - through EDP branch. | |



REGISTRAR